

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

IZQUIERDO & SON

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2050

Decision No. CU

1794

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by IZQUIERDO & SON, a partnership, in the amended amount of \$24,158.26 based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interest therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and

debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The record contains a copy of a document entitled "Business Certificate for Partners" issued by the State of New York on May 6, 1957, which establishes that Zoilo Izquierdo, Mario Izquierdo, and Liliane Izquierdo are the partners of IZQUIERDO & SON and that three aforementioned persons were the persons using the name, IZQUIERDO & SON, to carry on or conduct or transact business. The record further contains evidence establishing that Zoilo Izquierdo, Mario Izquierdo, and Liliane Izquierdo were, at all times pertinent to this claim, nationals of the United States. The Commission holds that claimant, IZQUIERDO & SON, is a national of the United States within the meaning of the Act.

The record contains copies of claimant's invoices, bills of lading, accounts receivable ledger sheets, and sales book entries establishing the shipment of goods to the following consignees in Cuba:

<u>Invoice No.</u>	<u>Invoice Dated</u>	<u>Consignee</u>	<u>Amount</u>
4279	12-10-59	Almacenes de Tejidos La California, S. A.	\$ 835.99
4273	12-10-59	Senores Prado, Garcia y Compania	\$ 966.78
		(less credit)	<u>112.14</u>
			854.64
4254	11-23-59	Senores L. Vivanco y Compania	619.79
4258	11-2-59	Senores Jose Matos y Compania, S en C	1,935.27
4170	10-30-59	Senor D. Santiago Garcia	\$ 925.25
		(less credit)	<u>7.42</u>
			917.83
4171	10-30-59	"	812.39
4172	10-30-59	"	207.83
4183	11-2-59	"	\$ 179.94
		(less credit)	<u>25.42</u>
			154.52
4012	8-20-59	Senores F. A. Vda. De Puron	844.42
4012-A	8-28-59	"	76.61
4192	11-2-59	Senores Kaba Hermanos	1,032.87
4332	11-17-59	Senores Farre y Compania	817.17
----	5-19-60	Rodriguez Cabrera y Compania	214.43
4453	6-9-60	Senor D. Jose Garcia	45.76
----	8-22-60	Lopez y Compania	190.70
4195	11-2-59	La Opera, S. A.	751.61
----	12-15-59	Mangas Alvarez	774.93
----	8-17-60	Camiseria Nacional	943.77
4296	12-21-59	Almacenes de Tejidos Universal, S. A.	23.95
4296	12-9-59	"	152.50

<u>Invoice No.</u>	<u>Invoice Dated</u>	<u>Consignee</u>	<u>Amount</u>
4281	12-1-59	Almacenes de Tejidos Universal, S.A.	\$ 1,885.11
4213	11-10-59	"	2,897.23
4153	10-16-59	"	156.89
4099	9-25-59	"	244.65
4807	9-22-59	"	\$3,735.63
		(less credit)	<u>44.04</u>
			3,691.59
4224	11-18-59	Compania Industrial Plastiflex, S.A.	1,392.06
		"	214.41
		(plus debit)	<u>38.99</u>
			<u>253.40</u>
			<u>\$22,727.91</u>

Claimant states that it has not received these funds.

The record also contains copies of claimant's invoice and bill of lading reflecting the sale to Hermanos Ferreira y Compania of Havana, Cuba, of goods totalling \$1,430.35; and a copy of a letter, dated March 17, 1960, from the First National Bank of New York, Havana Branch, to claimant, in which it is stated that the amount due from the consignee had been paid in local currency that day but that the bank was awaiting dollar reimbursement release from the Exchange Board, a Cuban Government agency. Claimant states that it has not received these funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049).

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and

that, in the absence of evidence to the contrary, the loss occurred

<u>ON</u>	<u>AS TO</u>
September 29, 1959	\$ 5,110.67
October 16, 1959	156.89
October 30, 1959	1,938.05
November 2, 1959	3,874.27
November 10, 1959	2,897.23
November 17, 1959	817.17
November 18, 1959	1,392.06
November 23, 1959	619.79
December 1, 1959	1,885.11
December 9, 1959	152.50
December 10, 1959	1,690.63
December 15, 1959	774.93
December 21, 1959	23.95
March 18, 1960	1,430.35
May 19, 1960	214.43
June 9, 1960	45.76
August 17, 1960	943.77
August 22, 1960	190.70
TOTAL	<u>\$24,158.26</u>

being the date of Cuban Law 568 as to the amount of \$5,110.67, the date after acknowledgement of payment as to the amount of \$1,430.35, and the dates payment was due as to the other amounts.

The Commission has decided that in the certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (See Claim of Lisle Corporation, Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that IZQUIERDO & SON suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-Four Thousand One Hundred Fifty-Eight Dollars and Twenty-Six Cents (\$24,158.26) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.
and entered as the Proposed
Decision of the Commission

MAY 1 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)